UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/677,338	10/02/2000	Jeffrey P. Kubala	POU920000176US1	3544

7590 10/31/2005	EXAMINER
William A Kinnaman Jr	SHAH, NILESH R

William A Kinnaman Jr
IBM Corporation - MS P386
2455 South Rd
Poughkeepsie, NY 12601

ART UNIT	PAPER NUMBER
2195	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>08 August 2005</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>4-27</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>4-27</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1. Claims 4-27 are presented for examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

> a. A patent may not be obtained though the invention is not identically disclosed or described as set forth
> in section 102 of this title, if the differences between the subject matter sought to be patented and the
> prior art are such that the subject matter as a whole would have been obvious at the time the invention
> was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability
> shall not be negatived by the manner in which the invention was made.

3. Claims 4-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris et al

(6.438.704) (hereinafter Harris) in view of Beelitz (6,032,239).

4. As per claim 4, Harris teaches the invention substantially as claimed including a

information handling system that specifying a maximum allowed consumption of said

resources, a method of enforcing capacity limitations comprising the steps of:

measuring an actual consumption (abstract; col. 4 lines 6-27); and

comparing said actual consumption with said maximum allowed consumption to

determine whether said actual consumption exceeds said maximum allowed consumption

and if said actual consumption exceeds said maximum allowed consumption, reducing

said actual consumption of said resources to said maximum allowed consumption (col. 4

lines 45-65; col. 8 lines 35- 65; col. 26 lines 32-67).

5. Harris does not teach the use of different partitions.

    Beelitz teaches the use of having different partitions with different resources (col. 2 lines
    56-65) for upgrading, adding, deleting or changing the partition or resources on an
    exiting hard drive (col. 3 lines 10-40).

6. It would have been obvious to one skilled in the art at the time of the invention to
    combine the teachings of Harris and Beelitz because Beelitz's system of having
    changeable partitions would improve the efficiency of Harris' system by eliminating the
    particular partition that has hit its permitted consumption before it bogs down the entire
    system.

7. As per claim 5, Harris, teaches the use of a information handling system that specifying a
    maximum allowed consumption of said resources (col. 4 lines 45-65; col. 8 lines 35- 65;
    col. 26 lines 32-67).
    Beelitz teaches the use of having different partitions with different resources (col. 2 lines
    56-65) for upgrading, adding, deleting or changing the partition or resources on an
    exiting hard drive (col. 3 lines 10-20).

8. As per claim 6, Beelitz teaches a method in which said group of logical partitions
    comprises all of the logical partitions on said physical machine (col. 2 lines 56-65, col. 4
    lines 7-17).

9. As per claims 7 and 8, Beelitz teaches a method in which each of the logical partitions in said group is assigned different status such as a primary, first extended, seconded (table 1) or inactive active (col. 3 lines 1-6). The examiner takes official notice that the uses of weights within partitions are well known in the art.

10. As per claim 9, Beelitz teaches a method in which said specified system resources are processor resources (col. 2 lines 56-65).

11. As per claim 10, Harris teaches a method in which said actual consumption is determined as a rolling average of said consumption over a predetermined time interval (col. 4 lines 6-27).

12. As per claim 11, Beelitz teaches a program storage device readable by a machine, tangibly embodying a program of instructions executable by the machine (col. 2 lines 33-40, col. 2 lines 56-65).

13. Claims 12-15 are rejected based on previous rejections for claims 4, 5, 7, and 8 respectfully.

14. As per claim 16,Harris teaches the use of a information handling system that specifying a maximum allowed consumption of said resources (abstract, col. 4 lines 4-27); measuring an actual consumption (col. 4 lines 4-27); and

comparing said actual consumption with said maximum allowed consumption to

determine whether said actual consumption exceeds said maximum allowed consumption

and if said actual average consumption exceeds said maximum average consumption,

reducing said actual average consumption of said resources to said maximum average

consumption by alternating operating said logical partition in a capped mode in which

said logical partition is limited to said maximum capped consumption and in an uncapped

mode in which said logical partition is not limited to said maximum capped consumption.

(col. 4 lines 45-65; col. 8 lines 35- 65; col. 26 lines 32-67), and

Beelitz teaches the use of having different partitions with different resources (col. 2 lines

56-65) for upgrading, adding, deleting or changing the partition or resources on an

exiting hard drive (col. 3 lines 10-20).

15. Claims 17-19 are rejected based on the same rejection for claims 5, 7, and 8 above

16. Claim 20 is rejected based on the same rejected as claim 11 above.

17. Claims 21-24 are rejected based on the same rejection for claims 16-19 above.

18. Claim 25 is rejected based on the same rejected as claim 16 above.

19. Claim 26 is rejected based on the same rejected as claim 11 above.

20. Claim 27 is rejected based on the same rejected as claim 16 above.

Response to Arguments

21. Applicant's arguments filed 8/8/05 have been fully considered but they are not

persuasive.

22. In remarks applicant argues that Beelitz does not teach the use of a physical machine

comprising one or more logical partitions, each of which is allocated a defined portion of

machine resources and has one or more software applications executing.

23. Examiner respectfully disagrees with applicant's remarks. Beelitz clearly teaches the use

of physical machine comprising one or more logical partitions, each of which is allocated

a defined portion of machine resources and has one or more software applications

executing (col. 2 lines 55-67; col. 3 lines 15-30). Beelitz states the first and second

logical partitions can run one or more pieces of software.

Conclusion

24. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

advisory action. In no event, however, will the statutory period for reply expire later than

SIX MONTHS from the mailing date of this final action.

25. Any inquiry concerning this communication or earlier communications from the

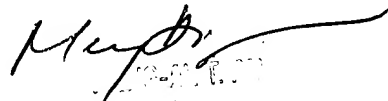examiner should be directed to Nilesh Shah whose telephone number is (571)272-3771.
The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Meng An can be reached on (571)272-3756. The fax phone number for the
organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the
Patent Application Information Retrieval (PAIR) system. Status information for
published applications may be obtained from either Private PAIR or Public PAIR. Status
information for unpublished applications is available through Private PAIR only. For
more information about the PAIR system, see http://pair-direct.uspto.gov. Should you
have questions on access to the Private PAIR system, contact the Electronic Business
Center (EBC) at 866-217-9197 (toll-free).

Nilesh Shah
Examiner
Art Unit 2195

NS
October 25, 2005